IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17744 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HINDUSTAN TIMES LTD - Petitioner(s)

Versus

ASHOK VYAS - Respondent(s)

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Appearance :

M/S THAKKAR ASSOC. for Petitioner(s) : 1,
Mr. Ashok Vyas, Party-in-Person, Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 26/10/2005

ORAL JUDGMENT

1. This petition was listed for admission hearing. However, the parties have supplied detailed set of documents and since the litigation is pending since 1996,

at the joint request of ld. Counsel appearing for the parties, this petition is disposed of finally at an admission stage.

2. The petitioner Hindustan Times Ltd., invoking jurisdiction of this court under Articles 226/227 of the Constitution of India, has assailed legality and validity of the order passed by ld. 6th Addl. Senior Civil Judge & Judicial Magistrate, First Class, Gandhinagar below application Exh.75 in Regular Civil Suit No. 65/1996 and prayed for issuance of appropriate writ, direction or order for quashing and setting aside the said order dated 24.06.2005, being illegal, arbitrary and contrary to the settled legal position. It is further prayed that this Court should allow application exh.75 holding that the Civil Court or at least Civil Court at Gandhinagar has jurisdiction to hear and decide the suit/dispute under adjudication.

3. It is contended that the respondent on the date of filing of the suit was undisputedly a Special Correspondent in Hindustan Times Ltd. having his Head Quarter at Gandhinagar and has served the petitioner company for about three decades. The gist of the petition is that the order under challenge requires to be quashed

because the ld. Lower Court has erroneously held that the preliminary issue raised by the petitioner is not required to be heard as a preliminary issue in reference to the statutory bar under the Scheme of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D.Act), especially when the respondent plaintiff is a workman within the meaning of section 2(f) of the the Working Journalist & Other Newspaper Employees (Condition of Service) and miscellaneous Provisions Act, 1955 (hereinafter referred to as the Act for short). The relevant provisions of the Act on which the petitioner has placed reliance has been reproduced by him in para-3(d) of the petition and it is submitted that it is crystal clear that only Labour Court will have jurisdiction to adjudicate the dispute raised by the respondent plaintiff in the suit instituted by him in the year 1996. The jurisdiction of the civil Court is barred and on account of the provisions of section 3(1) of the Act R/w section 25-FF of the I.D.Act, the lower Court ought to have held that issue as to the jurisdiction framed requires to be heard as preliminary issue before recording formal oral evidence on all the issues and/or dealing with other issues framed in the suit on the strength of the pleading of the parties. The second main

submission raised before the Court by the petitioner is that the Court at Delhi only would have territorial jurisdiction to hear and decide the suit and the civil Court at Gandhinagar has no territorial jurisdiction to hear and decide the suit. So, the issue as to territorial jurisdiction also should have been heard as a preliminary issue. That the ld. Judge has failed in not doing so and in rejecting the application exh.75. It is necessary to state in brief some basic facts leading to the civil suit and in turn the present petition.

(i) The respondent plaintiff of the suit got employment in the petitioner company. That when he was a Special Correspondent of Gujarat having H.Q. at Gandhinagar, respondent came to be chargesheeted on 10.11.10095 for the alleged irregularities and willful neglects in duty committed by him and thereafter, after holding inquiry, the respondent came to be dismissed from service on 31.10.1996. Respondent, therefore, challenged the said decision of dismissal by filing Regular Civil Suit No.65/1996 in the Court of ld. Civil Judge (S.D.), Gandhinagar for declaration and injunction seeking reinstatement in service. The respondent also filed an application exh.5 under O.39 R.1 & 2 R/w section 151 of

CPC for interim injunction. After hearing the parties, the ld. Civil Judge dismissed the application for interim injunction and that decision was assailed by him by filing an Appeal from Order under O.43 R.1(8) of CPC before the District Court. The ld. Extra Asstt. Judge, Gandhinagar video order dated 30.04.1998, allowed the appeal by quashing and setting aside the order passed by the ld. Civil Judge dismissing the application exh.5 and granted interim relief pending the hearing and final disposal of the suit. The petitioner company challenged the order passed by the appellate Court before this Court by filing Civil Revision Application No.893/1988. This Court, ultimately, quashed and set aside the order passed by the appellate Court. However, revisional court directed the trial court to proceed with the matter and decide the same as expeditiously as possible and in accordance with law. The ld. Single Judge (Coram: Kundan Singh, j), while allowing the above-numbered CRA, has considered various aspects and one of the aspect considered by the ld. Single Judge is that on the date of hearing, the respondent was already superannuated at the age of 58 years on 10th October, 1997 under the terms and conditions of contract entered into between the parties. It is necessary to reproduce some observations

made and findings recorded by the ld. Single Judge:-

> " It is true that the dismissal order was passed on 31.1.1996 and that was communicated to the respondent on 17.2.1996. Admittedly, the suit was filed on 19.3.1996 and the ex-parte interim injunction order was passed on the same day and after hearing both the parties, the application exh.5 filed by the respondent was rejected on 31.11.1996. Whether the suit is maintainable at Gandhinagar Court has to be determined by the Court at the relevant time after giving reasonable opportunity of leading evidence and hearing to the parties concerned. At this stage, it can not be said that the trial Court has or has no territorial jurisdiction to decide the suit. The question as to whether civil Court has jurisdiction to decide the suit filed by the respondent or jurisdiction of the civil Court is barred by the provisions of the Industrial Disputes Act,1947, can also be decided after hearing of the suit. This Court can not decide without having sufficient material on record on this point. But from the facts and circumstances of this case, it appears that the dismissal order was passed

on 31.1.1996 which was communicated to the respondent on 17.2.1996 and the suit was filed after delay of 1 ½ months i.e. on 19.3.1996 and after 2 ½ months from the date of dismissal of the respondent from service, the dismissal order was served and therefore interim injunction can not be passed directing the petitioner to reinstate the respondent in service.....”

It has been further observed that:-

“ Learned counsel for the petitioner pointed out that the respondent has already been superannuated at the age of 58 years on 10.10.1997 under the terms and conditions of the contract entered into between the parties, the respondent was entitled to continue in service superannuation age of 58 years or 30 years' service whichever is earlier. Accordingly, 30 years' service can be said to have been completed on 20.5.1997. Even if it is assumed that the order of dismissal of the respondent from service is illegal, the respondent would be entitled to his remuneration etc. till 22.3.1997. The petitioner has deposited the amount as per the directions of the Division Bench of this Court in the contempt proceedings. But the payment of the respondent was stayed by this

Court. The Registry of this Court is directed to remit the amount deposited in this Court by the petitioner to the trial Court where the respondent will file statement of his claim regarding his emoluments for the period from the date of dismissal i.e. 31.1.1996 till 22.5.1997. After such statement is filed by the respondent, the trial Court after verifying the statement presented by the respondent, will pay the same to the respondent on furnishing the solvent security. The rest of the amount will be returned to the petitioner. The trial Court is further directed to proceed with the matter and decide the same as expeditiously as possible in accordance with law without being influenced by the observations made in this judgment."

4. Thereafter, as the suit was not progressing, Misc. Civil Application was moved and the ld. Single Judge dealing with the said application (Coram: P.B. Majmudar,J), passed the following order on 21.04.2004:-

" In view of the facts and circumstances of the case, the trial Court is directed to dispose of the aforesaid suit being Regular Civil Suit No.65/1996

as early as possible and not latter than 31st December, 2004."

5. It is on record that while dealing with Letters Patent Appeal No. 622/2003 in Civil Application No.8220/2002, the Division Bench of this Court (Coram: R.K. Abichandani & K.M. Mehta, JJ), passed one order on 06.10.2003, on the submissions made by the parties appearing in the LPA, relevant part thereof reads as under:-

" The party-in-person, after clearly understanding the discussion that took place has suggested that, if the order of dismissal dated 31st January 1996 made against him is revoked, he is prepared to withdraw the pending suit and other proceedings including the present Letters Patent Appeal. The party-in-person clearly states that he undertakes to withdraw the civil suit within one week from the receipt of the order of revocation of his dismissal, failing which, he will be liable for contempt of court for breach of this undertaking."

6. After the above order, the petitioner Hindustan

Times Ltd. moved one Misc. Civil Application No.2109/2003 and Division Bench was informed that the statement made on behalf of the petitioner Company was under miscommunication between the ld. Counsel appearing for the company and the opponent (original plaintiff of the suit). So, in the Civil Application No. 2109/2003 in LPA No. 622/2003, the Division Bench passed the following order on 20.11.2003:-

> "2. As per the application, there was a miscommunication between the learned counsel appearing for the applicant and the applicant. It is stated before us by the learned counsel for the applicant that he was not authorized to make the statement that he made mistakenly before us.
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> 3. By consent of the party-in-person, who is present, we recall the order dated 6th October, 2003 and direct the Letters Patent Appeal No.622 of 2003 to be restored to file. The Appeal may now be placed for hearing before the appropriate Court. Rule is made absolute accordingly with costs, quantified at Rs.2,000-00. The learned counsel for the applicant states that the amount of costs will be paid to the

respondent today itself.”

7. The Court is aware that above details may not have much relevance in the background of the reliefs prayed in the present petition. However, they are mentioned because one of the point raised by the petitioner is that Gandhinagar Court has no territorial jurisdiction to hear and decide the suit.

8. The allegation of the respondent plaintiff before the Court is that the application under O.14 R.2 of CPC has been preferred after a long battle at a belated stage. But this argument would not help the respondent much because it is rightly pointed out by ld. Counsel Mr. Pahwa appearing for the petitioner Company that the trial Court had not even cared to frame issues till 18.03.2005. So, ultimately, on framing of the issues, the application to hear the issue No.4 as a preliminary issue was given. This Court also can not ignore one aspect that immediately after filing of the written statement in the year 1996 and at least after its success in the revision application in the year 2003, the petitioner company could have approached the Court with a request to frame preliminary issue under the scheme of O.14 of CPC and

even by suggesting specific issues on the point of jurisdiction or sustainability of the suit on the ground of alleged statutory bar. But the petitioner company has opted not to undertake that exercise and an application is moved only when the Court was about to record oral evidence on the issues framed. It emerges from record that the respondent plaintiff has always remained anxious to see that his matters are heard and decided as expeditiously as possible and there is no allegation by the petitioner that respondent has ever tried to delay the hearing of the suit.

9. I have carefully gone through the grounds stated in the memo of the petition and facts emerging from affidavit as well as affidavit of resistance available on record. It is argued by ld. Counsel Mr. Pahwa for the petitioner company that the ld. Judge was under an obligation to decide the issue as to the jurisdiction of the Court as preliminary issue in view of the scheme of R.2 of O.14 of CPC. In support of this submission, ld. Counsel Mr. Pahwa has taken me through relevant legal provisions and it is necessary to reproduce the provisions quoted by the petitioner in para-3(d) of the petition.

Section 2(f) of the Act reads as under:-

"2(f) "Working Journalist" means a person whose principal avocation is that of a journalist and who is employed as such, either whole time or part-time, in or in relation to, one or more news paper establishments, and includes and editor, a reader, writer, news editor, sub-editor, feature-writer, copy-tester, reporter, cartoonist, news-photographer and proof-reader, but does not include any such person who-

(i) is employed mainly in a managerial or administrative capacity; or

(ii) being employed in a supervisory capacity, performs either by the nature of the duties attached to his office or by reasons of the powers vested in him, functions mainly of a managerial nature;"

Section 2(C) of the Act reads as under:-

"2(C) "newspaper employee" means any working journalist, and includes any other person employed to do any work in or in relation to any newspaper establishment."

Section 3(1) of the Act reads as under:-

> “3(1) The provisions of the Industrial Disputes Act, 1947 (XIV of 1947), as in force for the time being, shall subject to the modification specified in sub-section (2), apply to, in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of the Act.
>
> (2) xxxx xxxx xxxx”

10. In view of the above provisions, it is argued by ld. Counsel Mr. Pahwa for the petitioner,that the respondent even as a Special Correspondent, was a working journalist and it was possible for the ld. Civil Judge to hold that the dispute raised before the Court by the plaintiff is an “industrial dispute” redressable by the Labour Court and that civil court has no jurisdiction. In support of this submission, Mr. Pahwa has placed reliance on the following decisions:-

(i) **Arun Agrawal v/s Nagreeka Exports (P) Ltd. & Anr., (2002)10 SCC 101.** In the aforesaid decision, The Apex Court, in paras 2 & 3, has observed thus:-

> “2. The plaintiff-respondents herein filed a suit

with leave under clause XII of the Letters Patent before the High Court of Calcutta on its original side for recovery of Rs.87,20,000 from the defendant-appellant herein. In the said suit, the plaintiff-respondents moved an application under Chapter XIII-A of the Rules of summary disposal of the suit. The appellant filed a petition for revocation of leave. The appellant took an objection that the Court has no jurisdiction to entertain and decide the matter. The High Court in its original side held that the question relating to jurisdiction shall be decided at the hearing of the suit. However, the High Court directed the appellant to furnish security for a sum of Rs.55 Lakhs by way of bank guarantee failing which there will be a decree for the principal amount of Rs.55 lakhs. It is against the said order, the defendant-appellant is in appeal before us.

3. Heard learned counsel for the parties. We are of the view that the question regarding the jurisdiction of the Court was required to be decided as a preliminary issue. We, therefore, set aside the order under challenge and send the case back to the

> High Court to decide the question of jurisdiction of the Court as a preliminary issue. The order passed by the High Court directing the defendant-appellant to furnish security for a sum of Rs.55 Lakhs by way of bank guarantee shall remain suspended till the said question pertaining to jurisdiction of the Court is decided by the High Court. In case it is held by the High Court that the Court has jurisdiction, the direction to furnish security for a sum of Rs.55 Lakhs shall come into operation."

(ii) The next decision relied upon is in the case of Union of India & Ors. V/s Adani Exports Ltd. & Anr., (2002)1 SCC 567, wherein the Apex Court has observed in paras 20 & 21 as under:-

> "20. Mr. Desai, however, placed reliance on a recent judgment of this Court in *Navinchandra v. State of Maharashtra,* wherein this Court had held that a part of the cause of action had arisen within the jurisdiction of the Bombay High Court. It is to be noted that in the said petition, among other reliefs, the writ petitioner had prayed for a writ of mandamus to the State of Meghalaya to transfer

the investigation to Mumbai Police as also allegations of malafides, were made as to the filing of the complaint at Shillong. It was also averred in that case that the petitioner was primarily aggrieved by the criminal complaint filed at Meghalaya because the bulk of investigation was carried on at Bombay. The said writ petition was dismissed by the Bombay High Court solely on the ground that since the complaint in question was filed in Shillong in the State of Meghalaya and the petitioner had sought for quashing of the said complaint, such a writ petition was not maintainable before the High Court of Bombay. According to this Court, that finding was given without taking into consideration other alternative prayer in the writ petition to which we have made reference herein above, which prayers according to this Court, gave rise to a cause of action to move the High Court at Bombay for relief. Therefore, in our opinion, this judgment does not help the writ petitioner to justify its action in filing a writ petition before the Gujarat High Court. That apart, we must notice that the said judgment is delivered in a matter involving criminal dispute and consequences of such

dispute have a direct bearing on the personal freedom of a citizen guaranteed under Article 21 of the Constitution of India. Therefore, the consideration that arises in deciding the question of territorial jurisdiction in cases involving criminal offences may not always apply to cases involving civil disputes like the special civil applications with which we are concerned. Mr. Desai then urged that since the High Court has elaborately dealt with the merits of the case and given a finding in favour of the respondents in the interest of justice, we should not interfere with the said finding and uphold the same. We are not inclined to accept this argument of the learned counsel because the appellants herein had taken objection to the entertainment of the special civil applications by the Gujarat High Court on the ground of lack of territorial jurisdiction in the first instance itself and the same was rejected, according to us, wholly on unsustainable grounds. As a matter of fact, the appellant on the entertainment of the civil application and grant of interim order, had challenged the said order on the ground of want of jurisdiction by way of a civil appeal in this Court

which appeal is pending consideration by this Court, therefore, the objection having been taken at the first instance itself and the court having not proceeded to decide this question of territorial jurisdiction as contemplated under Order 14 Rule 2 CPC, we think we can not deny relief to the appellant solely on the ground that the High Court has chosen to proceed to decide the case on merits. This being a judgment of a court having no territorial jurisdiction, the judgment has to be set aside. However, the special civil applications can not be dismissed on this ground because it has been the contention of the appellants themselves in the objections filed by them before the High Court, that these applications ought tobe transferred to the High Court at Chennai, in the interest of justice, we agree with this plea.

21. For the reasons stated above, these appeals succeed and the same are hereby allowed. The impugned judgment is set aside. We further direct that Special Civil Applications Nos. 3282 and 3279 of 1999 filed by the respondents are hereby directed to be transferred to the High Court of Madras at

chennai forthwith and on receipt of the papers, we request the Chief Justice of the High Court of Madras to place them before an appropriate Bench for disposal in accordance with law. We are also of the opinion that since the parties have already undergone one round of litigation before the High Court at Ahmedabad and thereafter in these appeals before us, it is appropriate to request the High Court to dispose of these appeals as early as possible. The appeals are, accordingly allowed."

11. According to the petitioner, issue No.4 framed by the Court is an issue of law. This issue No.4 framed by the trial Court reads as under:-

"(4) Whether the defendant proves that the Court has no jurisdiction to entertain the suit ?

The language of the said issue is ambiguous and an attempt is made by ld. Counsel Mr. Pahwa that this issue covers two points raised by the petitioner i.e. (i) statutory bar, and (ii) territorial embargo. The finding of the Lower court has to be appreciated in light of language of issue No.4 framed by the Lower Court.

According to ld. Counsel Mr. Pahwa, the ld. Civil Judge was under an obligation to decide the issue of law as preliminary issue. According to the petitioner, when respondent plaintiff is a working journalist within the meaning of section 2(f) of the Act, the scheme of section 3 of the Act would apply and, therefore, it should be construed as an express bar and any order challenging the dismissal/removal from service would not be maintainable in a civil Court. The plaintiff was appointed vide letter of appointment dated 22.05.1967 as a Reporter with the petitioner company. The petitioner lastly appointed the respondent as “Special Correspondent” and on the date of termination, he was a “Special Correspondent”. Of course, there is no reference of the word “Special Correspondent” under definition, but it emerges from record that he was not simply a Correspondent but was also discharging many other duties being a main person in the State H.Q. at Gandhinagar. The definition of “working journalist” covers large categories of the persons working with a newspaper and the plaintiff does not fall in the category of exceptions made in Clause (i) or (ii) of the said section. The person only employed in a supervisory capacity or is entrusted managerial or administrative work, only then he is not a “working

journalist”. Attention of this Court has been drawn to certain details by ld. Counsel appearing for the parties and especially Mr. Vyas appearing as party-in-person and these details also are available on record, in the averments made in the plaint as well as the documents produced in support of the pleadings of the parties. It would be a matter of debate whether the defendant would fall within the exception and if a person is found working in a dual capacity, what should be the forum to get the dispute redressed by such a person. In the background of the recent trend adopted by the developing companies and media companies of reducing number of employees to have an effective cut in expenses and simultaneously involving in the business of print-media and/or multi-media, what would be the appropriate forum even in the background of a statutory scheme, is a question of debate. What weightage should be given to the say of the petitioner that the plaintiff, though is a Special Correspondent, can not be said to be a person in any way working in administrative capacity or supervisory capacity, is a question which requires adjudication and decision. The petitioner company is a company of a national/international repute and the senior most person in the Head Quarter of such a company in a State of the

country having federal structure and working as a Special Correspondent, must have been entrusted with some important supervisory or administrative work and therefore, it would be difficult for any Court to accept the say of the petitioner Company that the respondent had no status or importance in the State H.Q. as a representative of the company in his capacity as a Special Correspondent. Complicated facts emerging from the documents reveal that the issue of jurisdiction on the ground of statutory bar pleaded by the present petitioner would rest on the evidence that may be led by the defendant because burden, in light of the issue casted by the Court, is on the shoulder of the defendant. The ld. Civil Judge has considered all relevant aspects. The say of the petitioner is that the respondent plaintiff has not been employed mainly in a managerial or administrative capacity may be true if the orders of appointment or promotion are read, but ultimately, the type of work entrusted or duties that were performed by the plaintiff, would become material. The facilities being provided to the plaintiff, allowances or other emoluments along with assistance provided to the respondent by the company or his entitlement to spend for such things at his discretion,

would be relevant aspects in deciding and determining the status of the plaintiff and nature of work carried out by him. It is true that section 2(f) of the I.D.Act is widely worded and it includes within itself all the persons who were doing manual, unskilled, technical, operational, clerical or supervisory work for hire or reward. This section also includes any person who has been dismissed, discharged or retrenched. However, it would be difficult for the Court to accept at this stage that he respondent is not covered by any of the exceptions mentioned in clause (i) or (in the interest of justice) of section 2(f) of the ID Act. The word “mainly in managerial or administrative capacity” has been interpreted by this Court and the Apex Court in number of decisions and the Court has found above referred aspects as to the salary, allowances and other perks, nature of duties etc. relevant. In the case of Chandrakant Tukaram Nikam and others v/s Municipal Corporation of Ahmedabad and another, AIR 2002 SC 997, the Apex Court has observed thus:-

> “ The Industrial Disputes Act is enacted by the Parliament to provide speedy, inexpensive and effective forum for resolution of disputes arising

between workmen and the employers, the underlying idea being to ensure that the workmen does not get caught in the labyrinth of Civil Courts which the workmen can ill-afford. The procedure followed by Civil Courts are too lengthy and consequently, is not an efficacious forum for resolving industrial Disputes speedily. The power of Industrial Courts also is wide and such forums are empowered to grant adequate relief as they think just and appropriate. It is in the interest of the workmen that their disputes, including the dispute of illegal termination are adjudicated upon by an industrial forum. The legality of order of termination passed by the employer will be an industrial dispute within the meaning of section 2(k) and under S.17 of the Industrial Disputes Act, every Award of Labour Court, Industrial Tribunal or National Tribunal is required to be published by the appropriate Government within a period of thirty days from the date of its receipt and such Award published under sub-section (1) of S.17 is held to be final."

12. The above observations has been cited by ld. Counsel Mr. Pahwa for the petitioner, but it would not help the

present petitioner. On the contrary, since the decision of the Apex Court in the case of **Premier Automobile Ltd. v/s Kamlekar Shantaram Wadke, AIR 1975 SC 2238;** it is settled that bar of jurisdiction of the civil court under ID Act is implied bar in a given set of facts. Set of facts emerging from record in the present case, has rightly taken the lower court to a conclusion that Issue No.4 is not required to be heard and decided as a preliminary issue.

13. In the case of **Awaz Prakash (petitioner) Ltd. v/s Pramod Kumar Pujari, (2003)6 SCC 104,** the Apex Court has held that the Labour Court only has jurisdiction to deal and decide the dispute being an industrial dispute, but the Apex Court was dealing with a different point for the cited decision. The issue which the Supreme court was invited to consider in the citied decision was whether the award passed by the labour Court under the provisions of the I.D.Act was without jurisdiction and whether the Board constituted under the provisions of the Act, alone has jurisdiction to deal with the question of retrenchment or removal. The Apex Court held that the Board constituted under the Act alone has no jurisdiction, but the labour Court was also competent.

So, unless the Court is able to come to a conclusion that the jurisdiction of the civil Court is barred, it can proceed with the suit on merits. It is not the say that the lower Court has impliedly accepted while dealing with application exh.75 that the jurisdiction of the Civil Court is barred, but even then it wanted to continue with the suit as it has been directed to hear and decide the suit as expeditiously as possible. It is true that it is impermissible to try the suit in which the civil court has no jurisdiction. Careful consideration of R.2 of O.14 of CPC, simply says that issue of jurisdiction or objections raised regarding jurisdiction requires to be decided as a preliminary issue. In the present case, the Court while dealing with an application exh.75, has held that issue No.4 is not required to be heard as preliminary issue and it is recorded by the ld. Judge that in view of the scheme of O.10 of CPC, all the issues are required to be heard and decided simultaneously and it is not possible for the Court to dispose of the suit on the point of jurisdiction only. The ld. Judge has observed that it is necessary to record evidence first and to evaluate the evidence even to decide whether the plaintiff is a “working journalist” or not. No formal issues are suggested by the petitioner in the application

exh.75. Insistence that issue No.4 should be heard and decided as preliminary issue and the arguments made before the Lower Court was that because of the statutory bar as well as lack of territorial jurisdiction, the suit requires to be dismissed and, therefore, issue No.4 should be heard as a preliminary issue. It is true that the ld. Judge criticized the time consumed by the petitioner in submitting the application of such nature after about 9 years from the date of filing of the written statement and the order can not be said to be detailed reasoned order, but that by itself would not be sufficient to exercise or invoke jurisdiction vested with the Court under Article 227 of the Constitution of India. This Court can consider the details placed before the Court and decide whether the ultimate finding is bad, illegal or perverse. It is rightly observed by the ld. Judge that the status of the plaintiff in the present suit needs evaluation of the evidence and, therefore, all the issues should be heard and decided simultaneously and issue No.4 is not required to be heard as preliminary issue. It emerges from record that the status of the petitioner whether falls in the exception, directly or indirectly, within section 2(f) of the Act or not, is a matter of appreciation of evidence and the same rests on

many relevant aspects that can be brought on record by way of evidence. So, the arguments on behalf of the petitioner on this point, are not found acceptable.

14. So far as other point as to the lack of territorial jurisdiction is concerned, ld. Counsel Mr. Pahwa has submitted that as per clause-12 of the letter of appointment, any dispute relating to employment shall be heard and decided by the Court at Delhi because the cause of action, as per the order of appointment, should be deemed to have arisen only in Delhi. Ld. Counsel Mr. Pahwa has drawn attention of this Court to relevant page-200-2001. Clause-12 of the letter of appointment reads as under:-

> “12. In the event of any dispute relating to your employment with this company, the cause of action shall be deemed to have arisen only in Delhi.”

According to the petitioner, a specific contention has been raised in para-4 of the written statement and, therefore, the point of territorial jurisdiction should have been decided as a preliminary issue under R.2 of O.49 of CPC and the ld. Trial Judge has failed in

considering this contention on territorial jurisdiction. According to ld. Counsel Mr. Pahwa, the order is non-speaking and without application of mind and, therefore, requires to be quashed. It is true that on this point, this Court can quash the order and remand the matter to the trial Court to give finding on this point, but ultimately the anxiety of the petitioner is that a positive finding on the point raised should be given. Opportunity should be reasonable opportunity which should be offered to the parties and that opportunity was offered,but there is no discussion in the order under challenge. But as observed by the Apex Court in more than one decisions, the superior courts should not normally remand the matter mechanically pointing out the fault or two in passing the order. If ultimately the finding is found proper, then justification of it even can be made and should be made by the higher Court. Mr. Pahwa has hammered the point of territorial jurisdiction in the background of above-referred clause-12 of the appointment letter and cited following decisions:-

(i) Hakam Singh v/s M/s Gammon (India) Ltd., 1971(1) SCC 286.

(ii) A.B.C. Laminart Pvt. Ltd. & Anr. V/s A.P.

Agencies, Salem, (1989)2 SCC 163;

(iii)Angile Insulations v/s Davyashmore India Ltd. & Another, (1995)4 SCC 153;

(iv) Shree Subhlaxmi Fabrics Pvt. Ltd. v/s Chand Mal Baradia & Ors., 2005 AIR SCW 1807;

15. I have considered all these decisions cited by ld. Counsel Mr. Pahwa. In the latest decision of the Apex Court in the case of Shree Subhlaxmi Fabrics Pvt. Ltd. (supra), the Apex Court was dealing with the matter under the Arbitration & Conciliation Act and the Apex Court found that there is a contract between the parties containing clause that dispute under the contract shall be decided by the court at Bombay and by no other Court. The Apex Court held that the Court at Calcutta would have no jurisdiction to try the suit for injunction restraining defendants from proceedings with arbitration proceedings at Bombay. The order of the High Court at Calcutta granting injunction in favour of the plaintiff without recording a clear finding as to the jurisdiction of the Court to try the suit and by making general remark that the plaintiff has arguable case and that he did not consciously agree to exclusion of jurisdiction of Court, according to the Apex Court, not proper. According to ld.

Counsel Mr. Pahwa, in view of above clause, the parties have agreed to succumb to the jurisdiction of the Court at Delhi, irrespective of the station, where the petitioner is posted. Having considered the scheme of section 20 of CPC and nature of agreement between the parties, the Apex Court has recorded its finding that on facts and circumstances of the case (emphasis supplied for the present judgment), the approach of the High Court was not correct and the plea of jurisdiction goes to the very root of the matter and the trial Court having held that it had no territorial jurisdiction to try the suit, the High Court should have gone deeper in the matter and until a clear finding was recorded that the Court had territorial jurisdiction to try the suit, no injunction could have been granted in favour of the plaintiff. In this cited decision, other judgments relied upon by ld. Counsel Mr. Pahwa are also referred, but the finding of the Apex Court in the cited case i.e. Shree Shubhlaxmi Fabrics Pvt.Ltd. (supra) is based on an overall consideration and on the facts and circumstances of the case. In the present case, the plaintiff when was terminated, he was serving at Gandhinagar and more than one supplementary proceedings or other ancillary proceedings have been conducted by ld. Lower Court at

Gandhinagar and by this High Court. From the many facts from the bundle, it reveals that the question whether Gandhinagar Court has territorial jurisdiction to decide the suit or not would rest again on evidence involving various questions including the question of public policy, intention of legislature while enacting section 20 of CPC and the effect of Cl.12 referred to in the order of appointment. The question of territorial jurisdiction in large number of cases has been held to be a “mixed question of facts and law” and the question more of facts than that of law. So, the ld. Lower Court could have said in one line that the issue of territorial jurisdiction is a mixed question of facts and law and does not fall in the category of the issues referred to in R.2 of O.14 of CPC i n the background of the facts available on record. It is true that the ld. Judge ought to have written this in so many words, but on this count only, the Court is not inclined to decide the point of territorial jurisdiction especially when this point is also a point of determination on merits when the trial Judge shall adjudicate issue No.4 raised on account of pleadings of the parties and mainly on the basis of written statement.

16. It is not necessary to comment on the scope of jurisdiction of this Court under Article 227 of the Constitution of India. It is true that jurisdiction in a given case under Article 227 of the Constitution of India is even wider than under Article 226 of the Constitution of India as has been observed in the case of **Suryadev Rani v/s Ramchandra Rai, (2003)6 SCC, 675.** But, merely because some error in passing the order is found, supervisory jurisdiction normally should not be invoked and even in case of a wrong order also, this Court and the Apex Court have said that invocation of constitutional jurisdiction is not warranted unless it is likely to result into serious prejudice or some injustice to a party. The petitioner company is fighting the battle since 9 years in Gujarat and at Gandhinagar. Even for the sake of argument if the parties are relegated to the labour Court, then it would be a denovo proceedings in the case of a person who has seen a day of superannuation in the year 1997 i.e. in couple of months after his date of dismissal from service. So, the totality takes this Court to a conclusion that the present petition requires to be dismissed as this Court is not inclined to exercise constitutional jurisdiction under Article 227 of the Constitution of India for quashing the order passed below

application exh.75 in a civil suit.

17. For the reasons aforesaid, this petition is dismissed. The impugned order passed by the lower Court below application exh.75 in Regular Civil Suit No.65/1996 on 24.06.2005 is hereby confirmed. The trial Court concerned is directed to hear and decide the Regular Civil Suit No.65/1996 as expeditiously as possible and decide all issues including issue No.4 objectively, independently and without being influenced by the present judgment. Petition stands dismissed accordingly.

18. At this stage, ld. Counsel Mr. Pahwa appearing for the petitioner company requested to place this judgment under suspension for a period of four week so that the petitioner can take appropriate steps. However, the said request is not accepted because ultimately the lower Court is directed to hear and decide all the issues on merits. So, till the Court decides the issues, the petitioner can approach the higher forum and obtain appropriate orders because the respondent is a senior citizen and earlier this court has directed the ld. Civil Judge concerned to hear and decide the suit as expeditiously as possible, and grant of request to place

this judgment under suspension would frustrate the said directions.

(C.K. BUCH, J)

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